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As of: June 9, 2004 (1:59pm)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act; amending sections 76-3-103, 76-3-501, 76-3-504, 76-3-601, 76-3-602, 76-3-603, 76-3-604, 76-3-605, 76-3-608, 76-3-609, and 76-3-620, MCA; and repealing section 76-3-505, MCA; and providing an immediate effective date; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the

landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) ~~"Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government~~

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~~survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation. "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.~~

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(13) ~~"Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana. "Public utility" has the same meaning as is provided in 69-3-101, except that for the purposes of this chapter, the term does include county or consolidated city and county water or sewer districts as defined in Title 7, chapter 12, parts 22 and 23.~~

(14) ~~"Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice~~

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~~engineering in the state of Montana.~~

~~(15)~~ (14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(16)~~ (15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

~~(17)~~ (16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged

and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection ~~(17)~~(16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

{ Internal References to 76-3-103:
x76-4-127 x76-6-203 x76-7-203 }

Section 2. Section 76-3-501, MCA, is amended to read:

"76-3-501. Local subdivision regulations. ~~(1)~~ Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage; subject to the provisions of 76-3-511, for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by

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reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of ~~such the~~ services.

~~(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body."~~

{ Internal References to 76-3-501:

x76-3-503 x76-3-504 x76-3-511 x76-3-511
x76-3-603 }

Section 3. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

~~(b)~~(c) establish procedures consistent with this chapter for the submission and review of subdivision ~~plats~~ applications and amended applications;

~~(c)~~(d) prescribe the form and contents of preliminary plats

and the documents to accompany final plats;

~~(d)~~(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

~~(e)~~(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

~~(f)~~(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, ~~at a minimum,~~ meet the regulations adopted by the department of environmental quality under 76-4-104;

(iv) the location and installation of public utilities;

~~(g)~~(h) provide procedures for the administration of the park and open-space requirements of this chapter;

~~(h)~~(i) provide for the review of ~~preliminary plats~~ subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the pre-application consultation provided pursuant to subsection (p) or those having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the ~~plat~~ application beyond the

time limits specified in this chapter, and the failure of any agency to complete a review of ~~a plat~~ an application may not be a basis for rejection of the ~~plat~~ application by the governing body.

~~(i)~~(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

~~(j)~~ (k) ~~(i)~~ except as provided in this subsection, require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width, to allow the physical placement and unobstructed maintenance of open ditches or

belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection ~~(1)~~~~(j)~~(k) is not required if:

~~(i)~~(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

~~(ii)~~ (B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and

legal documents for related sales transactions.

~~(k)~~(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

~~(l)~~(m) require the subdivider to describe, dimension, and show utility easements in the subdivision on the final plat in their true and correct location. The utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of utility facilities for the provision of utility services within the subdivision;

(n) establish procedures describing how the governing body will address information presented to the governing body after the hearing held pursuant to 76-3-605 and when the governing body may schedule subsequent public hearings to consider new information. The procedures must be in accordance with the provisions of [section 9];

(o) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body; and

(p) establish a pre-application process that:

(i) allows a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that will be contacted for comment on the subdivision application and the timeframes that the utilities, agencies, and other entities are given to respond. If the agent or agency designated by the governing body contacts a utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response;

(iv) requires that a pre-application meeting must take place no more than 30 days from the date that the agent or agency receives a written request for a pre-application meeting from the subdivider; and

(v) establishes a time limit after a pre-application meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in

76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

{ Internal References to 76-3-504:
x76-3-511 x76-3-511 }

Section 4. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of application and preliminary plat for review. (1) ~~Except when a plat is eligible for summary review pursuant to 76-3-505, the Subject to the submittal deadlines established as provided in 76-3-504(3), the subdivider shall present to the governing body or to the agent or agency designated by the governing body the subdivision application, including the preliminary plat of the proposed subdivision, for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.~~

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the application and preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the application and preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a

third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the application and preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide ~~an informational copy~~ summary of the information contained in the application and preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the ~~proposed~~ application and preliminary plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

{*Internal References to 76-3-601: None.*}

Section 5. Section 76-3-602, MCA, is amended to read:

"76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the

expense of reviewing subdivision ~~plats~~ applications."

{ *Internal References to 76-3-602: None.* }

Section 6. Section 76-3-603, MCA, is amended to read:

"76-3-603. Contents of environmental assessment. When required, the environmental assessment must accompany the ~~preliminary plat~~ subdivision application and must include:

(1) for a major subdivision:

(a) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; and

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(2) except as provided in 76-3-609~~(3)~~, for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608."

{ *Internal References to 76-3-603:*

x76-3-504 x76-3-509 }

Section 7. Section 76-3-604, MCA, is amended to read:

"76-3-604. Review of preliminary plat subdivision application -- review for required elements and adequacy of information. (1) (a) The governing body or its designated agent or Within five working days of receipt of a subdivision application submitted in accordance with the deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-601 and 76-3-602, the reviewing agency shall review the preliminary plat to determine whether it conforms to the provisions of this chapter and to rules prescribed or adopted pursuant to this chapter determine whether the application contains all of the elements listed as provided in 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agency's determination.

(b) If the reviewing agency determines that elements are missing from the application, the reviewing agency shall identify those elements in its notification.

(2) (a) Within 15 working days after the reviewing agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agency shall determine whether the application and required elements contain adequate information to allow for the review of the proposed subdivision under the provisions of this chapter and shall notify the subdivider or,

with the subdivider's written permission, the subdivider's agent of the reviewing agency's determination.

(b) If the reviewing agency determines that information in the application is inadequate to allow for review of the proposed subdivision, the reviewing agency shall identify the inadequate information in its notification.

(c) A determination that an application contains adequate information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agency to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and adequate information; and

(b) the subdivider or the subdivider's agent is notified.

(2) — The (4) After the reviewing agency has notified the subdivider or the subdivider's agent that an application contains adequate information as provided in subsection (2), the governing body shall approve, conditionally approve, or disapprove the preliminary plat proposed subdivision within 60 working days, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, of its presentation unless:

(a) the subdivider consents and the reviewing agency agree to an extension or suspension of the review period, not to exceed

one year; or

(b) a subsequent public hearing is scheduled and held as provided in [section 9].

~~(3)(5)~~ If the governing body disapproves or conditionally approves the ~~preliminary plat~~ proposed subdivision, it shall forward one copy of the plat to send the subdivider accompanied by a letter ~~over~~ with the appropriate signature ~~stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat~~ that complies with the provisions of 76-3-620.

(6) (a) Review and approval or disapproval of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain adequate information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determinations of whether the application contains the required elements and adequate information must be based on the new regulations."

{ Internal References to 76-3-604:
a76-3-601 x76-3-620 }

Section 8. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on ~~preliminary plat~~ subdivision application. (1) Except as provided in ~~76-3-505~~ 76-3-609 and subject to the regulations adopted pursuant to 76-3-504(n) and [section 9], the governing body or its authorized agent or agency

shall hold ~~a~~ at least one public hearing on the ~~preliminary plat subdivision application~~ and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the ~~plat~~ proposed subdivision should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the ~~preliminary plat~~ subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the ~~plat~~ proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing."

{ Internal References to 76-3-605:
x76-3-505 x76-3-601 }

NEW SECTION. **Section 9. Subsequent hearings --**

consideration of new information -- requirements for regulations.

The regulations adopted pursuant to 76-3-504(n) must comply with the provisions of this section.

(1) The governing body shall determine whether public comments or documents presented to the governing body following a hearing held pursuant to 76-3-605 constitute:

(a) information or analysis of information that was presented at the hearing held pursuant to 76-3-605 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or

(b) new information regarding a subdivision application that has never been submitted as evidence or considered by the governing body or its agent or agency at an earlier hearing during which the subdivision application was considered.

(2) If the governing body determines that the public comments or documents constitute the information described in subsection (1)(b), the governing body may:

(a) approve, conditionally approve, or disapprove the proposed subdivision without basing its decision on the new information; or

(b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.

(3) If a public hearing is held as provided in subsection (2) (b) :

(a) the 60-working-day review period required in 76-3-604 is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the 60-working-day time limit resumes; and

(b) the governing body may not consider any information regarding the subdivision application presented after the hearing when making its decision to approve, conditionally approve, or disapprove the proposed subdivision.

Section 10. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection ~~(7)~~ (6) of this section or except as provided in ~~76-3-505 and 76-3-509~~ or in 76-3-609(1) or (3), the ~~effect~~ impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection

(4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.~~

~~(b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6), the growth policy must meet the requirements of 76-1-601.~~

~~(7)~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);

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(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy."

{ Internal References to 76-3-608:

76-1-601	76-1-601	76-1-601	76-1-601
76-1-601	76-1-601	76-1-601	76-3-505
76-3-509	76-3-601*	76-3-603	76-3-603 }

Section 11. Section 76-3-609, MCA, is amended to read:

**"76-3-609. Review procedure for minor subdivisions --
determination of adequacy of application -- governing body may
adopt regulations.** ~~Subdivisions containing five or fewer parcels
in which proper access to all lots is provided and in which there
is not any land to be dedicated to the public for parks or
playgrounds are to be reviewed as follows: Minor subdivisions
must be reviewed as provided in this section and subject to the
applicable local regulations adopted pursuant to 76-3-504.~~

(1) When legal and physical access to all lots is provided,
the first minor subdivision from a tract of record that existed
or was legally created on or after April 2, 1973 from which no
subdivision has been approved under this chapter or from which no

more than five parcels have been created under 76-3-201 or 76-3-207 must be reviewed as follows:

(a) The Except as provided in subsection (1)(b), the governing body shall approve, conditionally approve, or disapprove the first minor subdivision from a tract of record within 35 working days of the submission of the a determination by the reviewing agency that the application contains required elements and adequate information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agency may agree to an extension or suspension of the review period, not to exceed one year.

(c) Except as provided in (1)(d)(iii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.

~~(2) The governing body shall state in writing the conditions that must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.~~

~~— (3) The requirements for holding a public hearing and preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record.~~

~~— (4) Subsequent subdivisions from a tract of record must be reviewed under 76-3-505 and regulations adopted pursuant to that section.~~

(d) The following requirements do not apply to the first

minor subdivision created from a tract of record that existed or was legally created on or after April 2, 1973 from which no subdivision has been approved under this chapter or from which no more than five parcels have been created under 76-3-201 or 76-3-207:

(i) the requirement to prepare an environmental assessment;
(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and

(iii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed within a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) section 76-3-608(3); and
(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(2) Except as provided in subsection (3), subsequent minor subdivisions from a tract of record that existed or was legally created on or after April 2, 1973 from which no subdivision has been approved under this chapter or from which no more than five parcels have been created under 76-3-201 or 76-3-207 must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614 and 76-3-620.

(3) The governing body may adopt subdivision regulations

that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (1) and this chapter.

(4) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an application is determined to contain adequate information for review as provided in subsection (1)(a)."

{ Internal References to 76-3-609:

76-3-504 76-3-601* 76-3-603 76-3-620 }

Section 12. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements -- written statement. In addition to the requirements of 76-3-604 and 76-3-609, ~~a governing body may not deny or condition a subdivision approval under this part unless it provides a~~ any decision by the governing body on a proposed subdivision must be based upon and accompanied by a written statement to the applicant detailing the circumstances of the subdivision denial or condition imposition. The statement must include:

- ~~—— (1) the reason for the denial or condition imposition;~~
- ~~—— (2) the evidence that justifies the denial or condition imposition; and~~
- ~~—— (3) information regarding the appeal process for the denial or condition imposition that:~~

(1) includes information regarding the appeal process for

the denial or condition imposition;

(2) identifies the regulations and statutes that are relevant to the decision and explains how they contributed to the decision;

(3) provides the facts and conclusions that the governing body relied upon in making its decision that are based on relevant issues raised through documents, testimony, and other materials submitted during review of the proposed subdivision;

(4) identifies where in the public record the items listed in subsection (3) are located; and

(5) provides the conditions that may apply to the subdivision approval and the conditions that must be satisfied before the final plat may be approved."

{ Internal References to 76-3-620: None. }

NEW SECTION. **Section 13. {standard} Repealer.** Section 76-3-505, MCA, is repealed.

{ Internal References to 76-3-505: a76-3-601 a76-3-605 a76-3-608
a76-3-609 } }

NEW SECTION. **Section 14. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 15. Applicability.** [This act] applies to subdivision applications submitted on or after [the effective date of this act].

- END -

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